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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69372; File No. SR-NYSE-2013-26)

April 15, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List to Provide Relief for Floor Brokers from the Annual Telephone Line Charge for January, February and March 2013

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 2, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to provide relief for Floor brokers from the Annual Telephone Line Charge for January, February and March 2013, which the Exchange proposes to become operative as of January 1, 2013. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to provide relief for Floor brokers from the Annual Telephone Line Charge for January, February and March 2013, which the Exchange proposes to become operative as of January 1, 2013. The Exchange previously amended its Price List to provide such relief for November and December 2012.<sup>3</sup>

Currently, member organizations are charged an Annual Telephone Line Charge of \$400 per phone number. The Exchange proposes to waive the fee for Floor brokers for January, February and March 2013 on a prorated basis because Hurricane Sandy affected the ability of Floor brokers to communicate with customers from the Floor.

As noted in the Prior Waiver Filing, the damage to the telephone connections was very extensive. While telephone connections became fully operational by March 31, 2013, a majority of telephone line connections for Floor brokers were not fully operational during the January through mid-March 2013 period. In particular, the Exchange notes that the telephone lines that support both the wired and wireless connections for Floor brokers were based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy.<sup>4</sup> In addition to the

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<sup>3</sup> See Securities Exchange Act Release No. 68538 (December 27, 2012), 78 FR 335 (January 3, 2013) (SR-NYSE-2012-71) ("Prior Waiver Filing").

<sup>4</sup> The Exchange filed a rule change to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers ("DMMs") to use personal portable phone devices on the Floor following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional. See Securities Exchange Act Release No. 68137 (November 1, 2012), 77 FR 66893 (November 7, 2012) (SR-NYSE-2012-58). The Exchange subsequently filed to extend

damage to telephone lines, internet bandwidth was reduced considerably; however, internet service has been significantly restored as of March 31, 2013. The Exchange notes that it is waiving the fee for Floor brokers only because off-Floor member firms were not impacted by these services. In addition, DMMs are on the Floor but do not engage in an agency business with customers from the Floor and, therefore, were not impacted by the telecommunications issues. The proposed waiver would be \$33.33 for each month.

As stated above, Hurricane Sandy had a disproportionate impact on Floor brokers compared with off-Floor member firms and DMMs, including limited telephone service, no direct customer telephone lines, limited Internet service, intermittent cellular telephone service at the Exchange, and persistent busy signals. As a result, Floor brokers faced greater operating challenges and have experienced reduced activity from certain accounts and customers compared with pre-Hurricane Sandy levels. Therefore, Floor brokers are not getting the full benefit of their licenses.

The proposed waiver would apply retroactively to January 1, 2013 and would be reflected in the March 2013 billing statement.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected member organizations would have in complying with the proposed changes.

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the temporary suspension. See Securities Exchange Act Release Nos. 68161 (Nov. 5, 2012), 77 FR 67704 (Nov. 13, 2012) (SR-NYSE-2012-61); 68211 (Nov. 9, 2012), 77 FR 69534 (Nov. 19, 2012) (SR-NYSE-2012-64); 68271 (Nov. 20, 2012), 77 FR 70862 (Nov. 27, 2012) (SR-NYSE-2012-67); 68452 (Dec. 17, 2012), 77 FR 75683 (Dec. 21, 2012) (SR-NYSE-2012-73); 68704 (Jan. 22, 2013), 78 FR 5851 (Jan. 28, 2013) (SR-NYSE-2013-06); and 68958 (Feb. 20, 2013), 78 FR 13127 (Feb. 26, 2013) (SR-NYSE-2013-14).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that waiving the Annual Telephone Line Charge for Floor brokers for January, February and March 2013 is reasonable because Hurricane Sandy affected the ability of Floor brokers to communicate with customers and the ease with which they could represent public orders on the Floor. Therefore, the Exchange believes it is reasonable to provide relief for Floor brokers in this regard.

The Exchange believes the proposed change to the Annual Telephone Line Charge for Floor brokers is equitable and not unfairly discriminatory because Floor brokers are the only

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

class of member organization that was affected by the telecommunications issues, which has impacted their ability to conduct their regular business and has resulted in reduced activity from certain accounts and customers. Therefore, it is equitable and not unfairly discriminatory to offer the fee waiver only to Floor brokers, which is the only class of Floor members not getting the full benefit of their licenses. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent, during the period when phone service continues to be intermittent, Floor brokers should receive relief from the Annual Telephone Line Charge.

The Exchange believes that the proposed relief for Floor brokers removes impediments to and perfects the mechanism of a free and open market and national market system because it would provide relief for Floor brokers that are experiencing ongoing issues with telephone service while they are conducting their regular business on the Floor. The Exchange further believes that the proposed waiver does not permit unfair discrimination because they would provide relief for Floor brokers that have been disproportionately impacted in their ability to operate as agents for customers during this time of unprecedented weather disruptions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change to the Annual Telephone Line Charge is limited in duration (January through March, 2013) and Floor brokers are the only class of member organization affected by the telecommunications issues described above, which have impacted their ability to conduct their regular business and have resulted in reduced activity from certain accounts and customers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow the Exchange to provide the proposed relief during the billing period in which the Floor brokers were affected. Accordingly, the Commission designates the proposal operative upon filing.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2013-26 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2013-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

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<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2013-26 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).